To Professor Warren,
with the respects of
the Author.
J. B. Whitridge.

AN

EXPOSITION

OF THE AFFAIRS

OF THE

Medical Society

OF SOUTH-CAROLINA,

SO FAR AS THEY APPERTAIN TO THE ESTABLISHMENT OF A

Medical College in Charleston,

AND THE SUBSEQUENT DIVISION OF THE LATTER,

Into two Schools of Medicine.

PUBLISHED BY ORDER OF THE MEDICAL SOCIETY.

Charleston:
PRINTED BY
E. J. VAN BRUNT,
No. 121, East Bay,
1838.

At a stated meeting of the Medical Society of South Carolina, convened this day, December 2nd, 1833, the following was unanimously adopted:—

Resolved, That the Report of the late Committee of the Medical Society, relating to the affairs of the Medical College, be submitted to a Committee, to inspect, revise and publish the same.

From the minutes.

FRANCIS Y. PORCHER, M. D.
President of the Medical Society.

JACOB DE LA MOTTA, M. D. *Secretary.*

EXPOSITION, &c.

THE unhappy Schism which has taken place between the late Professors of the Medical College of South Carolina, and the Medical Society of South Carolina, the founder of this Institution, and the establishment of two Medical Colleges in the city of Charleston, and the erroneous impressions which exist in relation to the causes of this Schism—require that a full explanation of all the material circumstances which have produced this result should be made known to the public. However painful, the members of the Medical Society feel it their duty to show, that in the controversy which has terminated in the final separation of the Professors as teachers in the Society's School, and the Society, no blame can be attached to the latter. That in no one instance have the members of the Society infringed upon the rights, privileges, or honors of the Professors, but have only maintained their own. That they did not wish the Professors to withdraw, but were anxious that they should continue in the discharge of their duties—that in all their acts, they have been governed alone by a sense of duty to their profession, and the community at large.

To substantiate these statements, it will be necessary to give a concise history of the origin and progress of the Medical College, and the ground of complaint on the part of the Professors. In the discharge of this duty a scrupulous avoidance as far as possible of all remarks which might appear in the slightest degree personal, will be adhered to. It is far from the wish of the members of the Medical Society to awaken angry or vexatious discussions, confident that such a course would only compromit the character and dignity of the Medical profession and outrage public feeling. Their motives and conduct have been impugned, and they feel only desirous to vindicate themselves.

In 1821, Dr. Cooper in an address ably demonstrated the importance of establishing a Medical College in South Carolina. He was desirous of having it established in Columbia, or partly in Columbia, and partly in Charleston. In consequence of this

suggestion an effort was made to establish a Medical College in Charleston. To accomplish this a memorial was sent up to the Legislature by the Medical Society, in November 1822, to have its charter so extended as to enable it to confer Medical degrees. This was not acted upon—this effort having proved unsuccesful, the subject was again brought to the consideration of the Society, when it was determined that application should be made to the Trustees of the Charleston College to confer Medical degrees, if aCollege was established. This application was likewise rejected It was therefore resolved that another memorial should be sent to the Legislature in 1823, which application proved successful, and the following Act was passed :

AN ACT *to incorporate certain Societies, and for other purposes.*

WHEREAS the Medical Society of South Carolina has taken measures for the establishment of a Medical School in Charleston, to be conducted by Professors chosen by the Society, and at its own expense, and has petitioned for the authority to confer Medical Degrees; and whereas it is the duty of an enlightened government to aid the advancement of science:

Be it therefore enacted, That from and after the passing of this Act, the Medical Society of South Carolina, shall be, and they are hereby authorized to organize a Medical School, to consist of such professorships as they may deem expedient, and to confer Medical Degrees upon such candidates as may qualify themselves therefor, under the regulations which they may establish.

In the Senate, the twentieth day of December, in the year of our Lord one thousand eight hundred and twenty-three, and in the forty-eight year of the Independence of the United States of America.

JACOB BOND PON,
President of the Senate.
PATRICK NOBLE,
Speaker of the House of Representatives.

It will thus be seen that the establishment of the Medical College was through the agency of the Medical Society alone.

The Medical Society having now been essentially incorporated as a Medical College, entered promptly upon a plan for the establishment of a School of Medicine; a committee was appointed, composed of most of the gentlemen who were afterwards appointed Professors, who made a report, a part of which is copied, shewing the terms upon which the gentlemen were expected to accept of Professorships in the school about to be form-

ed. After urging the importance of having a Medical School, the committee remark :—

"It cannot however be denied that there exist certain difficulties in the way of any plan that can be offered for the formation of a Medical School, under present circumstances. The chief and most pressing of these is one indeed which includes all the rest, and from which they all spring, the want of money.—The friends of the Society, it is too well known, are not in a condition to allow of extending any considerable pecuniary patronage to the proposed Seminary without exhibiting a degree of generosity inconsistent with prudence; but your committee are satisfied that this serious obstacle is by no means insurmountable, they are confident that in any event your Professors elect will take upon themselves willingly the burden of the expenses of the establishment; they cannot believe that there is among us a single individual who if chosen from the rest for the fulfilment of so high a trust, the accomplishment of so desirable an object, would not freely contribute his share of the necessary expenditures."

With this fair understanding, urged too by many of the gentlemen who were elected Professors, although most of the chairs were warmly contested by others willing to accept under similar conditions; it will in due order be shown that these very gentlemen laid claim to all the funds granted to endow the College by the City and the State as their own, over which it is pretended the Medical Society had no right to exercise any control. The gentlemen elected to the different Professorships were

John E. Holbrook, M. D.
Professor of Anatomy.
James Ramsay, M. D.
Professor of Surgery.
Samuel H. Dickson, M. D.
Professor of Institutes and Practice of Medicine.
Thomas G. Prioleau, M. D.
Professor of Obstetrics and Diseases of Women and Children.
Edmund Ravenel, M. D.
Professor of Chemistry and Pharmacy.
Henry R. Frost, M. D.
Professor of Materia Medica.

The Medical Society now appointed Trustees, who were to act conjointly, with the Professors, in adopting such plans as were best calculated to insure the successful operation of the Medical College; full confidence was reposed in them, and it was

expected as the especial duty of the Professors, as agents of the Medical Society, delegated with a high and solemn trust, receiving all the honor and reward incidental to their stations, that they would leave no means untried to secure the permanency and success of the College. It was their interest as well as their duty so to do.

With this understanding the College was founded, and flourished beyond the most sanguine expectation. The Professors to the best of their abilities performing their part, and the Society giving its patronage, and regularly superintending the Institution, and conferring the degrees. There was for several years perfect harmony.

What then, it may be asked, gave rise to discontent—what produced that unhappy schism which has so fatally struck at the usefulness of a School so flourishing, and promising so much good? The cause will be explained—and it will then be seen whether the Medical Society, or the Professors, wished to usurp power beyond what either had a right to.

In 1831, the Professor of Surgery resigned his chair. Two candidates offered, to supply his place, Dr. Eli Geddings and Dr. John Wagner. The Professors were anxious to have Dr. Geddings appointed; yet as a faculty they never made any communication to the Society to this effect. As members of the Medical Society, having an equal right to vote as other members, they used all their influence to obtain his election. Dr. Wagner was however, elected by a small majority. The result of this election gave great umbrage to the Professors, and they sent a protest to the Medical Society, wherein after stating what they had done for the Medical College which will be presently considered, they conclude with the claim, "that they have the moral right of determining who ought or who ought not to enjoy with them the advantages and privileges, the honors and reputation which have cost them the best years of their lives." A proposition so extraordinary and unparalelled in the history of any literary or scientific institution, as Professors denying the right to the power which created them, of having vacancies in the College supplied in the same manner in which they were appointed, was promptly rejected. The election was perfectly fair and constitutional, and the members of the Society regarded themselves as charged with a solemn trust which they were to exercise independently, and to the best of their abilities, and however resolved the members of the Society were to maintain their rights, they scrupulously avoided interfering with the rights of the Professors, and were particu-

larly anxious that all causes of dissention should be, if possible, prevented. All they desired was, that the College which had gone on prosperously under the control of the Society should so continue. The Professors were now, however, determined, if possible, to obtain all power over the College, and to retain it in their own hands, or at least to deprive the Medical Society of any further control. To appease irritated feelings a committee of the Society was appointed to confer with them, which committee "warned them of their contemplated efforts, told them that if a separation took place the good feeling of medical gentlemen, so important to the success of the College, would be alienated—that they would injure an institution in which the public was so much concerned; that the College had gone on prosperously, and beyond the most sanguine expectation under the existing relation between the Medical Society and College—that to change the regulations of an institution not only without good reason, but against it, would cause it to be regarded as unstable, and vacillating, and would thus impair the public confidence."

These admonitions were disregarded, so determined were the Professors to deprive, if possible, the body which created them, of its chartered rights.—The Professors sent up to the Legislature a memorial, praying to alter the Board of Trustees of the Medical College, in other words, to deprive the Medical Society of its charter, and transfer it to another body. Upon a knowledge of this procedure, the Society sent up a counter memorial. This memorial was carried up by Dr. T. Y. Simons, who was instructed to represent the feelings and wishes of the Society. The particulars of his agency has been already before the public, wherein he affirms, that before a committee of the Legislature composed of five distinguished lawyers, viz., Messrs. Dunkin, Petigru, Wardlaw, McWhillie, and Wallace Thompson, he urged the unconstitutionality of any Legislative enactment depriving the Society of its chartered rights, when it was decided by the committee that it was not a chartered right, but a trust without an interest. The letter of Mr Dunkin to Dr. Simons which has been likewise published, confirms this statement. Such being the opinion of these intelligent gentlemen, Dr. Simons agreed that he would not seek to have the question agitated in the Legislature, provided the committee would not take all power from the Society; although he distinctly stated he had no authority from the Society so to act. An Act was reported to the house, as the result of a compromise, although it was altered in some essential points from the one he had assented to, which was passed. [See Appendix, A.]

When the Act was presented to the Medical Society, it was rejected. It was maintained that the opinion of the committee was incorrect, that the Legislature had not the constitutional power to interfere with its chartered rights, that private Corporations were sacred, and that it was due to the Medical Society, to the community, and to the country, that the question should be tested by the laws of the land, to which decision, as in duty bound, the Society would cheerfully acquiesce. The case was accordingly brought before the Appeal Court which honorable body declared the Act of the General Assembly to incorporate the Medical College of South Carolina, passed 17th of December, 1831, *unconstitutional* and restored to the Society its former rights. [See Appendix, B.]

In taking this step, it was far from the intention of the Society to cast any reflection upon the Legislature. It was believed that honourable body acted under mistaken views, and not from any intentional oppression.

Were the Professors, it might with great propriety be asked, deprived of their situation? No.* It was the particular desire of the members of the Society that they should continue in office. The object as already stated, not being to infringe upon any of their rights or privileges, but simply to maintain the rights of the Society. Under these circumstances, and with these feelings, it was confidently anticipated that a decision by the highest law authorities, after an impartial hearing, would have satisfied reasonable men, who had a desire to promote the interest of the Medical profession, the community, and the College. But to the great surprise of the members of the Society, the Professors (except the newly elected Professor of Institutes and Practice of Medicine, without any intimation being given to that gentleman or the Society,) sent up a memorial, praying for a new Incorporation.--When this new act of hostility became known, it was too late to send up to the Legislature a counter-memorial, and an Act was passed, creating a new College, the tendency of which, was, to injure, if not destroy the old Incorporation. At the same

*After the decision of the Appeal Court Dr. Dickson resigned his Professorship. The resignation, it was unanimously agreed not to accept, so anxious were the members of the Society to show that the object of the contest was not to deprive any of the Professors of their rights Dr. D. however, persisted in his resignation's being accepted, and it was accordingly accepted.

As their were no prospects of Dr. Dickson's again accepting the chair he previously occupied, he having been spoken to by many of his friends, an advertisement was then issued, inviting gentlemen to make application for the vacant Professorship, and Dr. T. Y Simons was elected, who performed the duties of the chair in the session of 1832 and 1833.

time appointing all the Memorialists teachers in the new institution, and eleven gentlemen, *not* of *the Medical Profession*, to act as Trustees. [See Appendix, C.] It is not pretended, that the Professors were bound to notify the Society of their intention, although common courtesy would seem to require it. But it does seem as if they were afraid that if a fair investigation of all the circumstances had been made, they would have failed in their object. If their cause was just, why resort to concealment; why not have the question fully brought to the view and understanding of the Legislative Assembly? It was the confident expectation of the members of the Soociety, that the Legislature of the country would not act upon *exparte* statements, that they, as an enlightened and impartial body, having alone the interest and prosperity of the country at heart, would have adopted the wise and equitable maxim, "*Audi alteram partem*," more especially as the Appeal Court after hearing an elaborate and learned discussion had decided in favor of the Society. The interests of the Medical School, the cause of Medical Science, the unalterable principles of justice, seemed to demand this. But, it was decided otherwise, and a new Act of Incorporation was passed. We feel persuaded, that had the members of the Legislature been fully apprized of all the circumstances which gave rise to the controversy between the Society and the late Professors of the Medical College, the new Act of Incorporation would not have been passed. They would have said, go on under your existing regulations; one College we have already liberally endowed, and we will not now do an act which will be calculated to injure it.

Although the Memorialists were appointed by the Legislature Professors in a new incorporated College, they did not resign their stations in the old Incorporation. To hold Professorships in both Colleges was absurd; accordingly the Trustees made formal written inquiry of the Professors, whether they intended to remain in the old Institution, or become Professors in the new. Thus presenting them a choice. Did this look like proscription? Did this look like a desire to deprive them of their situations? Even with this renewed and unjustifiable attack upon the body which had created them Professors, and without which body they never would have held these stations, the members of the Medical Society with a magnanimity which became the dignity and character of members of a learned profession, were willing to forgive, and forget, and to have these gentlemen to continue in the performance of their duties. The only

satisfaction, however, which was obtained, was, that they did not wish to be "catechised." The Professors would not say whether they would remain in the Medical College of South Carolina under the Society, or in the other Institution. At the termination of the course of Lectures the Medical Society conferred degrees upon the graduates. As soon as the session of the College had terminated, the Professors kept forcible possession of the College building, would not admit the Trustees or the Professor of the Institutes and Practice of Medicine to enter, and a man was placed there with orders to shoot the first person who attempted to enter. The Medical Society had the question again referred to the Courts of the County, when twelve impartial Jurymen and two Magistrates after hearing all the testimony, promptly decided in favour of the Society, and the building was transferred to the Society. [See Appendix, D.] The late Professors were resolved not to have any connection with the Medical Society, at least in their capacity as Teachers, and of their own free will, withdrew from the control of the Society, and placed themselves under the Trustees of the new Institution. If it had been their wish they could have remained as Professors, and had all the advantages of the building, erected not from money out of their pockets, but from money granted by the City and State for which we are all taxed.

The cry of injustice founded upon *exparte* statement, has been raised against the Medical Society; to show how unjust this statement has been, it is only necessary to state, that in every instance where the whole merits of the question have been fairly canvassed, the Society has been admitted to have been right, and the Professors wrong. The constant efforts of the Professors have been *power;* to cast a stain upon the body which created them; to transcend the constitution and law under which they were appointed. The Society has simply maintained its rights, and because the Professors could not destroy the charter of the Society they abandoned their situations in the Medical Society's School, for the places which they now occupy.

The members of the Medical Society invite investigation, and if the Legislature will appoint a committee of impartial individuals to examine the subject—every circumstance will be laid before them—for the members of the Society feel that they have been persecuted, insulted, and wronged. The former Professors, in a memorial to the Legislature, had stated that the whole burthen of establishing the Medical College fell upon them, and it has been generally believed they have suffered ma-

ny sacrifices. Now a more fallacious statement never was spread abroad. Let the facts be made known.

1st. The Professors knew that if they were elected—for when the law was passed they were simply members of the Society—that they would have to bear all the expenses—but to meet these expenses, each Professor was allowed to charge each student from Fifteen to Twenty Dollars for their Lectures, and Five Dollars for Matriculation or Entrance, and Forty Dollars for Graduation Fees.

2dly. That these Professors were not the only persons willing to enter upon these duties under this contract, almost every chair was warmly contested.

3dly. That although to erect a small wooden building to Lecture in, the Professors had at first, to advance some money; say Five or Six Thousand Dollars. Yet the first year they had Fifty Students, whose Tickets, Matriculation and Graduation Fees, came up to that amount. Afterwards, Fifteen Thousand Dollars were granted by the City,* Seventeen Thousand by the State, and upwards of Sixteen Thousand for Matriculation and Graduation Fees, charged upon the Students, which the Medical Society allowed the Professors to take, for the express purpose of defraying incidental expenses.—The aggregate, of this, is Forty-Eight Thousand Dollars, which they have received to erect a building, procure a Chemical apparatus, ob-

*In relation to the $15,000 obtained from the City, the Professors considered that it was their private property. How the facts are these, without consulting the Medical Society, they entered into a bond, with the City Council to which each made himself liable, the conditions of which were, that if the sum of $15,000 was granted to the Medical College of South Carolina, (to which Institution it was granted, and not to the Faculty as private individuals,) they would guarantee medical attendance at the Alms House and Marine Hospital free of expense to the City, finding medicines, &c. for the period of ——— years. Now these duties have never been performed, except for one or two years, by the Professors, agreeably to the expectation of Council, but by other medical gentlemen, and when the question was tried in the City Council, it was decided that the contract made with the Professors, was not made with them as private individuals, but as Agents of the Medical Society Or in other words, as the Faculty of the Medical Society's School. The Faculty having been dislocated, their bond was cancelled—and the Society entered into a new bond with the City Council that the Institutions should be provided with medical attendance free of expense The public Institutions viz. the Marine Hospital and the Hospital of the Alms House, agreeably to this decision, remain under the superintendence, and in the sole charge of the Medical Society's present Agents. It is true the former Faculty petitioned for the money granted by the Legislature as well as that granted by the City Council—they were, however, acting as agents of the Society, whose especial duty it was to attend to it, and it was given not to them but to the College.

tain Anatomical preparations, and for incidental expenses.—The building has been left in very bad repair. The Chemical apparatus in an indifferent and deranged state, and very imperfect, and but a small Anatomical Museum. The building and all the apparatus it is presumed would not bring Twenty Thousand Dollars—so far from the Professors spending their own money—they were lavish in the expenditure of the public money. Let us see now how much they gained and divided among themselves, for their Lectures, for much has been said about their pecuniary sacrifices.—From 1824 to 1832 there have been upwards of *nine hundred and fifty Students* who have attended the College, each of whom paid for the Tickets of the Lecturers, one hundred and five Dollars. Multiply nine hundred and fifty by one hundred and five, and you will have *Ninety Nine Thousand Seven Hundred and Fifty Dollars*, deduct nine thousand seven hundred and fifty Dollars for bad debts, and you will have *Ninety Thousand Dollars*, which have been a clear profit divided among them since the establishment of the College.—And if it had not been for the Medical Society the Parent of the Medical College, whose President alone has the power of conferring degrees, they could not have shared this profit. Thus then the Society gave them the opportunity of obtaining honor and pecuniary reward, for services which they volunteered and were anxious to perform, and it has received in return the abuse and contumely of those whom *it* patronized.

Such is a plain and accurate history of all the material circumstances connected with the origin of the Medical College of South Carolina, the relation which subsisted between the Society and Faculty, and the grounds of difference.

The Professors having obtained from the Legislature a new Act of Incorporation with new Trustees—they thus severed the connection which subsisted between them, as Teachers in the Medical College, and the Medical Society, and all that remained for the Trustees of the College to do, was, to appoint Professors to fill Chairs which thus became vacant. Accordingly an advertisement was issued inviting candidates from different parts of the United States, and the following gentlemen were elected:

JOHN R. RHINELANDER, M. D. of New-York.
*Professor of Anatomy.**

THOMAS Y. SIMONS, M. D. of Charleston, S. C.
Professor of Theory and Practice of Medicine.

*DR RHINELANDER brought with him probably the most valuable collection of Anatomical preparations in the United States.

Gunning S. Bedford, M. D. of N. York.
*Professor of Obstetrics and Diseases of Women and Children.**
Andrew Hazel, M. D. of Charleston, S. C.
Professor of Materia Medica.
Henry Alexander, M. D. of Charleston, S. C.
Professor of Institutes of Medicine.
William Hume, M. D. of Charleston, S. C.
Professor of Surgery.
Charles Davis, M. D. of Philadelphia.
Professor of Chemistry.

The Trustees are :—

Francis Y. Porcher, M. D. *President of the Medical Society and Ex-officio Chairman of the Board of Trustees.*
Benjamin B. Simons, M. D.
Edward W. North, M. D.
Joseph Glover, M. D.
Thomas Aiken, M. D.
J. De La Motta, M. D.
William Holmes, M. D.
E. Horlbeck, M. D.
H. S. Waring, M. D.
Elias Ball, M. D.
J. C. W. Mc'Donald, M. D.
J. B. Whitridge, M. D.
V. Le Seigneur, M. D.

In reorganizing the Medical College of South Carolina, the Trustees appointed by the Medical Society to superintend this Institution, exercised their best judgement for the interest of the College and the advancement of Medical science ; and in strict accordance with the high and solemn trust reposed in them, they invited applicants from every portion of our country, and selected such as they believed would confer reputation on the Institution, and afford the best assurance of future success. Whatever local feelings might have existed, in relation to *political* subjects, they did not suffer them to bear on an Institution purely scientific ; and hence they did not look to the place of nativity, but the capability and character of the candidates that offered. The period when the former Professors separated themselves from the superintending control of the Medical Society, and placed themselves under the control of another sett of Trustees

*Dr. Bedford also brought with him an extensive and valuable museum in his department.

was so near the opening of the session, that the Trustees had merely time to reorganize the Medical College under the control of the Society, and hence, the number of students who are in attendance this year, are comparatively few—independently of this, the College suffered from erroneous impressions and groundless prejudices.

The Society, the Trustees, and the Faculty, however, are determined to advance firmly and steadily, undismayed by any ungenerous or disingenuous efforts, to weaken or impede their progress. The cause of science and of truth, will be the great lights by which they hope to be guided in their course. The Medical Society is called upon to sustain its reputation, and the rights and dignity of the Medical profession.—Impartial consideration is all that is asked. The members of the Medical Society, with a proud conciousness of the equity of their case, could not stoop to ask the sympathies, nor would they desire to awaken the prejudices or passions of the public. But all they ask is justice, impartial justice, and where can they with more confidence appeal for this, than to their fellow citizens, to whom this exposition is respectfully submitted.

APPENDIX.

NOTE A.

AN ACT to Incorporate the Medical College of South Carolina.

Sec. 1. Be it enacted by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly and by the authority of the same, That a board of trustees be and are hereby established, by the name and style of the Board of Trustees of the Medical College of South Carolina, who are hereby declared to be a corporate body, by the style and title of the President, Trustees and Faculty of the Medical College of South Carolina.

Sec. 2. And be it further enacted by the authority aforesaid, That the said board shall consist of thirteen members, whereof six shall be elected by the Medical Society of South Carolina, who shall be members of the medical profession and shall also have been members of the said society for a period of not less than ten years; six members of the said board shall be nominated by the Governor of the State, and the President of the Medical Society aforesaid, for the time being, shall be ex officio, a member and President of the board of trustees.

Sec. 3. And be it further enacted, That when any vacancy shall occur among the members of the said board, nominated by the medical society, the same shall be filled by the said society, and any vacancy among the members nominated by the Governor shall be filled by that portion of the board of trustees.

Sec. 4. And be it further enacted, That the said Medical College shall, by its said name, have perpetual succession of officers and members, with a common seal, and the said board of trustees shall have power to make all lawful and proper rules and

by-laws for the government and regulation of themselves, and of the said college; provided that those which effect the college shall be subject to a concurrent vote of the faculty and of the trustees; and the said corporation is declared capable of receiving and holding real and personal estate, whether acquired by gift, devise, bequest, or purchase, for the purposes and benefit of the said College.

Sec. 5. And be it further enacted, That whenever a vacancy shall occur in the faculty of the college the said trustees shall have power to elect to the vacant professorship; and that the said trustees shall have power, on the application of the faculty of the Medical College, to establish such, other or assistant professorships as may be recommended by the faculty and approved by the board.

Sec. 6. And be it further enacted, That the said Trustees shall have power to confer medical degrees on such persons as may have attended lectures in the college—and may be recommended by the faculty, and on such other persons as they may propose; and also that all the rights, powers and duties heretofore conferred upon or required of the medical society in relation to the medical college shall be transferred to and vested in the said corporation, subject to the provisions of this act.

Sec. 7. And lastly be it enacted, That this shall be deemed a public act, and that the same need not be pleaded, but may be given in evidence under the general issue.

In the Senate House the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-one, and in the fifty-sixth year of the Independence of the United States of America.

HENRY DEAS, President of the Senate.

H. L. PINCKNEY, Speaker of the House of Representatives.

NOTE B.

THE STATE OF SO. CA. vs A. HEYWARD, et al } In the Appeal Court, February Term, 1832, O'NEAL, Judge.

The Medical Society of South-Carolina was incorporated in the year 1794. In 1817, by the act to regulate the licensing of Physicians, and for other purposes therein mentioned, they were constituted a Board of Physicians at Charleston, to examine and license applicants to practise Physic and Surgery; and also to license Apothecaries to vend Medicine. In 1823, the Medical Society was, by an act of the Legislature of that year, authorized to organize a Medical School at their own expense, to consist of such Professorships as they may deem expedient, and to confer

Medical Degrees upon such candidates as may qualify themselves therefor, under the regulations which they may establish. In 1824, the Medical Society elected Professors; and they undertook to be at all the expenses of the institution; the Honorary Members of the Society were constituted a Board of Trustees; and rules and regulations for the government of the School were adopted. The Trustees and Professors applied to, and obtained from the City Council of Charleston, the use of a part of the Poor House square, for the purpose of erecting the Lecture Rooms, of the Professors. In 1825, the Faculty of the College, (as the Professors are to be henceforward to be called) applied to and obtained from the City Council an appropriation of fifteen thousand dollars; and a lot of land for the purpose of enabling them to erect a more suitable and convenient building for the school, upon the conditions that they should lay out the said sum in erecting a building for the College, on the lot connected with the Marine Hospital, that the building should be kept in good repair, while they use it, and that they should supply the Poor House and Marine Hospital with medical attendance for twenty years, and that at the end of this time, the City Council should be at liberty to make such order and require such conditions for the further use of the said building as to them shall seem meet. The Professors, as individuals, according to the Resolution of the Council, gave their bond for the performance of these conditions. In December of this year the Legislature made an appropriation of ten thousand dollars for the Medical College, to be drawn by and placed at the disposal of the Faculty, for the completion of their buildings, and the purchase of apparatus necessary and proper for such an Institution. In 1830 a further application of seven thousand dollars was made for the Medical College, to be paid to the Order of the Faculty of the College. In 1831 the Legislature passed an Act to incorporate the Medical College by the name and style of the President, Trustees and Faculty of the Medical College of South Carolina. The Act directs that the board shall consist of thirteen members; six to be elected by the Medical Society of South Carolina, and six to be appointed by the Governor; the President of the Medical Society for the time being, to be ex-officio a member, and President of the Board. The power of conferring Medical Degrees, is given to the Trustees; and "all the rights, powers and duties heretofore conferred upon or required of the Medical Society, in relation to the Medical College, are transferred to and vested" in the said corporation created by this act. The Medical Society *refused to elect the Trus-*

tees, whom they were authorized to elect by the act; or in any wise to acquiesce in it. [The Governor nominated as Trustees, N. Heyward, S. Prioleau, B. F. Dunkin, H. L. Pinckney, C. J. Colcock, and R. J. Turnbull, who, with the Faculty, have exercised all the rights, privileges, and immunities, which is by the act conferred on the corporation created by it. The Medical Society applied to Mr. Justice Bay for a Quo Warranto, who refused the application, and a motion is now made to reverse his decision. The only question necessary to be considered, is, whether the Act of the General Assembly, to incorporate the Medical College of South Carolina, passed on the 17th day of December, 1831, is constitutional.]

It is to be regretted by every citizen of the State, that the prosperity of so admirable and beneficial an institution as the Medical College, should be in any degree endangered by the contest which has prevailed for some time between the Faculty and the Medical Society. It is a subject of pride to every Carolinian, that such an institution has so soon grown up, and reached to mature usefulness. It is peculiarly honorable to the able, talented, and persevering members of the Faculty, that they have furnished a medical education at home, to the young and rising generation, equal to any which is to be found in older and better endowed seminaries. With feelings common to every citizen who will look to the considerations which I have stated, we have been called on to decide a question, which we are aware may injure an institution so worthy of being cherished. It is, however, not only in relation to the college, a delicate question, but we feel that it is so in another point of view. The constitutionality or unconstitutionality of an Act of the Legislature, is at all times a grave and serious question—for the Law Makers, as well as the Judiciary, are in some degree the keepers of the constitution. They, as well as we, are bound by the most solemn of all sanctions, to preserve, protect and defend it; and we are well aware that they are not disposed deliberately to trench upon it. It does however happen, and always will happen, that looking only to utility, the question of constitutional law may be (as we presume it was on this occasion) entirely overlooked in legislation.

As was well observed in the argument of the Counsel for the Respondents, no Act of the Legislature ought to be pronounced unconstitutional by the Judiciary, unless it be clear beyond all doubt that it is so. When, however, this is the case, I know no duty more sacredly enjoined upon us, and none more firmly and unhesitatingly to be performed, than to interpose ourselves be-

tween the Legislature and the Constitution. In doing so, no Legislature of this state, ever has supposed or ever will suppose, that the Judiciary desire to take so responsible a situation, from any other motive than a conviction that it is a paramount duty to do so.

The constitutionality of the act depends upon the inquiry, whether the Medical College is to be regarded as a part of the chartered rights of the Medical Society of South Carolina. If it is so, then it follows that it is a private institution, founded by a private corporation, and liable only to be visited by it, and governed by the Laws which it has thought, and may think, proper to ordain for it. The correct solution of this inquiry must depend upon the Acts of the Legislature, in relation to the Medical Society and the Medical College, and the facts which have been already stated in the history of this case; and from them I shall proceed, in the first place, to deduce the conclusion, that the Medical College is a private institution, founded by the Medical Society; and afterwards to shew the legal effect of this conclusion as to the constitutionality of the Act to incorporate the Medical College of South Carolina.

By the Act incorporating the Medical Society, 3d Brev'd. Dig. Tit. 13, sec. 95, p 167, they are authorized to purchase and hold real Estate, the annual income of which shall not exceed £300 sterling. This provision has been noticed not so much from any effect it has had on our minds in coming to the conclusion which we have made, as from a desire to meet, as far as we can, every view which was taken in favor of the respondents. It is true, this limitation would prevent them from acquiring real estate beyond their annual income; but it does not therefore follow, that they might not be the *legal owners of the College Lot and Buildings, for twenty years.* For what is annual income; it is that sum, which (when derived from property,) the owner annually receives from the use of it. If he leases a House and Land to one, to be used in educating the poor, or to receive and educate students for a certain reward, to be paid to the occupant, it cannot be said that the owner derives any income from this source. The public benefit is his only reward. Neither is there any certain separate income derived from the estate even to the occupant; the teacher may make his vocation in that place valuable to him; still the income is derived from his instruction, and not from the house and land. This is the case with the Charleston Medical College building and lot; they are devoted by the owner, whoever it may be, to medical instruction, and from them no income is

derived. *To the Professors, their lectures delivered in the College building, are, as they* should be, a source of annual income; it is the just reward paid to them by the students, for the communication of that science and learning which is so honorable to them, and useful to the state.

"The Preamble to the Act of 1823, p. 74 75, recites:—Whereas, the Medical Society have taken measures for the establishment of a Medical School, to be conducted by persons chosen by them and at their own expense, and have petitioned for the power to confer degrees." Although I am not disposed to attach any great importance to Preambles of the Acts of our Legislature, for they are generally prepared before the bills are matured, and are often allowed to pass without any critical examination, whether they are calculated to shed any light on the intention of the Legislature, and on these accounts have been latterly altogether rejected by the Legislature, yet when they undertake to set out the grounds upon which the Legislature have thought proper to act, and these are found to be consistent with the enactment, they constitute a pretty sure guide as to the intention of the Law, and must have legal effect in giving construction to it.

It is manifest from the Preamble, which is in perfect accordance with the enactment, that the Legislature did not intend to establish a public corporation, of which they were to be regarded as the founders; it recites that "The Medical Society have taken measures for the establishment of a Medical School." This is the same recitation which would have been made, with the variation of the name, if any citizen had established, or was about to establish the School, and had applied for an Act to enable him to carry his project into complete effect. It shews conclusively that the Medical Society, and not the State, was the founder. It is "to be conducted by persons chosen by them, (the Medical Society,) and at their own expense." The Legislature in this shew their sense, that the institution was to be established by private enterprize and not by the liberality of the State, and was therefore to be beyond their control. The powers of appointment and removal are generally the same, at least in one sense, they must be derived from one source, if exercised by different agents. The Legislature do not pretend that they are to confer the right to appoint; it is "to be conducted by persons," selected or to be selected by the Medical Society, as their agents and not the agents of the State. The persons to conduct the school are here recognised as the appointees of a private corporation, and of course responsible to it alone. But it is supposed that the

words, "at their own expense," refer to the persons by whom the school was to be conducted, and not to the Medical Society.— This, so far as regards the question between the State and the Medical Society, whether the Medical College is a public or private Corporation is wholly unimportant; but upon another branch of the case, by whom is the College to be regarded as founded? by the Society or the Professors? it may be important, and it is better now to give a construction to these words. The evident sense and meaning of the words, apply them to the Medical Society. If the words "to be conducted by persons chosen by them" were included, as they ought to be, in a parenthesis, then there would be no reason for any grammatical doubt about the application of the words "at their own expense;" they would then clearly refer to the Medical Society as the antecedent of the word "their." But on reaching the preamble in reference to the facts, which has been exhibited to us, there can be no doubt about the application of the words. It appears from the extract from a journal of the Medical Society of the 2d of Feb. 1824, that they understood the words "at their own expense," to mean at the expense of the Society. The professors were not then appointed, and the Society referred the subject of establishing the School, to a Committee, who reported, that "The funds of the Society it is too well known, are not in a condition to allow of extending any considerable pecuniary patronage to the proposed Seminary, without exhibiting a degree of generosity inconsistent with prudence. Yet your Committee are satisfied that this serious obstacle is by no means insurmountable. They are confident your Professors elect will take upon themselves the burden of the expenses of the establishment. They cannot believe that there is among us a single individual, who, if chosen from the rest for the fulfilment of so desirable an object, would not freely contribute his share of the necessary expenditures. Your Committee have therefore left this subject altogether for the determination of the Lecturers or Professors, whom you may hereafter appoint." This report was adopted, and constituted the foundation of the College. It shows how the words "at their own expense," were understood by the Society, including the Professors, who were afterwards chosen from the members of the Society. Independent however, of this contemporaneous construction of the words by the very parties now before the Court, the same construction will be obtained by referring to the persons who were in being at the time the act of 1823 was passed, and who must therefore be regarded as alone within the intendment of the Legislature. The profes-

sors of the Medical College were not then appointed, and were not therefore legally being and existing. Of persons not yet in legal existence, and whose will could not be known, it is impossible that the Legislature could have intended to say that they had undertaken to establish and conduct the School, "at their own expense." Of the Medical Society the Legislature might very well infer that such was their undertaking. For they had set out in their petition that they had taken measures to establish the School, and had only asked for the power to confer degrees. It was from this statement and request fairly to be inferred that by their own means the School would go into operation, and all that they needed was that they might have a legal sanction to confer its Academic privileges upon the Students.

The preamble recites that the Medical Society "have petitioned for the power to confer Degrees;" this was asking, in other words, that they might be made a Medical College; and if the State with this matter thus brought distinctly to her view, thought proper to make the grant reserving no control over them to herself, how can it be pretended that she has afterwards any right to interfere with her arrangement, or to deprive her grantee of its privileges but for a violation of its implied condition by Misuser or Non User, to be ascertained by the law of the land, as administered by the Courts of Justice. After stating further in the preamble that it is the duty of an enlightened Government to aid the advancement of science, the Legislature enacts that "the Medical Society of South Carolina shall be and they are hereby authorised to organise a Medical School to consist of such professorships as they may deem expedient, and to confer Medical Degrees upon such candidates as may qualify themselves therefore under the regulations which they may establish." The act thus confers upon the Medical Society, First, the power to organize the school; Second, the power to establish as many Professorships as they may deem expedient; Third, the power to confer Medical Degrees; and Fourth, the power to make the laws necessary for the government of the school. These four powers, it seems to me, were all which the state had to confer, and having granted them, that nothing remained but that she should see that they were legally exercised by her grantee.

It is generally true that he who furnishes the means in land or money, whereby a charity is created, is legally the founder, and as incident thereto has the right "to inspect, regulate, control and direct it." But to constitute a legal founder, I am not satisfied that it is in all cases indispensable, that he should furnish any pe-

cuniary aid. If the State or a Corporation establish a College, and appoint professors with fees for instruction, and one person afterwards furnishes land on which a building is put up, and another the money to erect the buildings, and to purchase the necessary apparatus; and the State, or the Corporation, has the power of removing the professors, and of making laws for the whole institution, does it not follow that the State or the Corporation is the founder, and not the donors. The powers incident to a foundation belong to the State or the Corporation, and when they are acknowledged, we may as legitimately deduce from them the cause, as we could from it the effect. The donation is in trust, it is there for the purposes of the institution, and cannot be otherwise applied; but it is not the creation of the College, and it is this which makes a foundation. The institution has existence, and the donation only makes it more generally useful. But this part of the case is perhaps unimportant, for I do not understand that either the State or the City Council claim to be founders on account of their respective appropriations. It is contended that the Professors are the founders, and that the Medical College is to be regarded as distinct from the Medical Society.

The Professors themselves were created by the Medical Society; it is by their appointment that they deliver lectures, and receive fees. They accepted their appointments upon the express condition, that they should bear the burden of the expenses of the establishment. They became therefore the agents of the Society, not only to deliver the lectures, but also to endow the Medical College. The first act which was done in giving effect to the establisment of the College, was the procuring the use of a part of the Poor House lot, for the purpose of erecting the Lecture Rooms of the Professors. This was the joint act of the Trustees and Professors appointed by the Medical Society, and this it cannot be pretended was a foundation by the Faculty alone. It was the act of the Society, for it was done by all of their agents, constituted to manage the School. All the subsequent donations were made by the City Council, or the State, at the instance of the Professors, as Professors, the Faculty of the Medical College, or were made by the Professors themselves. To say that they could do any act in that character, which would enable them to say, we are independent of the very power which gave it to us, which enacts laws for our government, and which we have accepted, and to which we have consented to be amenable, is to my mind a strange proposition. It would be making the created

equal to the creator. As individuals, they might have been the founders; but as the Lecturers or Professors of the Medical Society, under both the express and implied terms of their appointment, whatever they did was under the charter already granted to the Medical Society, to organize the Medical School, and to give it effect. When done, and the School went into operation, it was the Medical School or College of the Medical Society. In obtaining the appropriation from the City Council, of Fifteen Thousand Dollars, the Professors as individuals gave their bonds for the performance of the conditions annexed by the Council to the appropriation, and this might have given some plausibility to to their claim to be regarded as the founders, had it not been that their application was in their derivative character as the Faculty of the Medical School; an Institution already in existence, and not one which was to be established; the appropriation was made to them in that character, and the execution of bonds as individuals was required by the City Council as affording a better security than any which they could execute in a corporate capacity. This is clearly not a new foundation, but is in aid of that which had already been made. Whatever acts the Faculty did in obtaining this or any other endowment, is not only binding on themselves, but also on their principal, the Medical Society. By the first article of the rules and regulations of the Medical College of South Carolina, it is provided that the Faculty of the College shall consist of seven Professors, who shall be elected by the Society by ballot, and who shall deliver Lectures on the following subjects, viz: Anatomy, Surgery, Materia Medica, Institutes and Practice of Physic, Obstetrics, and Diseases of Women and Infants, Chemistry, and Pharmacy, and Natural History and Botany. The Lectures shall be delivered during the months of November, December, January, February and March, liable to such particular regulations as regards the frequency and number of Lectures of each Professor, as shall be adopted by the Faculty, subject to the revision of the Medical Society. If any Professor elected by the Society shall fail or neglect to prepare a sufficent course of Lectures by the time appointed for the commencement of the operations of the School, his Chair shall be declared vacant, and the Society shall proceed to another election."

This shows that the Faculty were made perfectly dependent on the Society, not only for their election, but also in relation to the discharge of their duties. They became officers of the Medical Society, charged with the care of a particular department; and out of the discharge of their duties could not grow a totally

distinct body or corporation. But they were not even left to their own enterprize and skill, in the organization and management of the school. The second article provides that the Honorary members of this Society shall be a Board of Trustees, "to watch over and promote the best interests of the Institution, to aid and assist the Faculty with their countenance and advise in the government of the school, and in the furtherance of the objects which it is intended to accomplish." It also directs that at a special meeting on the first Monday in April, the Medical Society "shall receive an annual report of the proceedings of the Faculty through their Dean," particularly designating the subjects upon which it shall communicate information. It would seem from these two provisions, that the Medical College was regarded by the Medical Society, and the Faculty as an institution belonging to the former, and entirely subject to their parental care and control. To argue, after having become Professors under such rules, that the College was not a part of the Medical Society, deriving existence from them, and subject to their Government, would seem to imply that the agent might at any time set up for himself and deny the authority of his principal over the subject committed to his care; such a course might be sometimes useful to the agent; but it could never be tolerated by the principal or allowed by the law.

The power to confer Degrees by the act of 1823, is conferred distinctly upon the Medical Society in the Medical School or College by them to be organized. As I have before said, this made them the Medical College, the professors are their instructors, and in that character become a part of it; but independent of the Society they had no power of conferring Degrees. This power the Medical Society have never parted with, and they still have the right to its exercise. In the fourth article, after making some regulations in relation to character, previous study, and a written dissertation to be prepared by each Student, it is provided, "at the end of his second course each candidate shall be entitled to a private examination before the faculty, and if approved by them he shall appear before the Society at their meeting on the first Monday in April, at which time and place he shall defend his dissertation or thesis. The opinion of the Society respecting the fitness or unfitness of each Candidate shall be expressed in the usual form, of balloting, a majority of two thirds of the members present in his favor shall be necessary to entitle him to his degree. At a public meeting of the Society to be held the next day, or as soon thereafter as may be convenient, and to which the Literary

and professional Gentlemen of the community shall be especially invited, the Candidates who have passed their examination, shall be introduced and receive their respective diplomas from the hands of the President of the Society, who shall at the same time deliver a suitable address. In order to shew on the part of the Society a marked encouragement for classical attainments, a premium of seventy dollars in money or books, shall be annually offered for the best Latin or Greek Thesis or Dissertation." The fifth article directs that a Candidate for a Medical Degree having met the approbation of the faculty of the Medical College of S. Carolina, shall defend his Thesis before the Medical Society, and this shall be the final examination." Every one of these provisions show that the Medical Society was the legal head, or patron of the Medical College, and that without their assent none of its honors or privileges could be granted. The State had no right to resume this grant at pleasure; it is a privilege conferred on a private corporation, and not a duty required to be done by it—the examination and licencing of Physicians and Apothecaries by the Medical Society as a board of Physicians, under the Act of 1817, was a duty to the community to be performed by them; for this purpose they were the State's agents, and the State could at any time end the agency by repealing the law, or revoke and commit the agency to others.

But it is said notwithstanding all these views still the faculty of the Medical College must be regarded as a distinct corporation on account of the appropriations, made by the Act of 1825 and 1830. I have no doubt that if a body of men, not entitled to a legal name as a body politic and corporate, should be described in an Act of the Legislature by a name and style, that this would emphatically give them such a legal right to the name and style, as would at least legally entitle them to the benefit of the Act. But I do not think this can benefit the faculty. The appropriations were for the "Medical College," and to be drawn by or paid to the order of the faculty. The acts themselves obviously make a distinction between the College and the faculty of the College. They are supposed to be two different bodies known to the law. What was, at the time the Acts making the appropriations were passed, the Medical College? It then consisted of the Medical Society, the Trustees and the Faculty; for these were the different parts of the body according to its organization —in the rules and regulations no one of these was the college; although if the Society had pleased in the organization of the School, they might have directed the several members in rotation

to have discharged the duties of the professorships, and thus have dispensed with permanent professors altogether. So too they might have performed themselves the duties of the Trustees, and thus have continued as they were in the first instance, the Medical College. For I am satisfied that the power to confer Degrees made them legally a Medical College. If the College at the time the Acts were passed was the Society, the Trustees and Faculty, then the appropriation was for a body in legal existence, and having a legal name, and did not set up a new Corporation. The result of the examination is that the Medical Society, under its charter as extended by the Act of 1823, founded the Medical College, that all endowments, whether made by the professors, the City Council or the State, must be regarded as made in aid of the original foundation. It is therefore a private institution, founded by a private Corporation, unless its object, public instruction, should make it a public one. The divisions of Corporations into public and private, will be more simply and easily understood as political and private; whatever belongs to the public or people composing a government; or is instituted for the good government of any part of the people, is a public or political Corporation, private Corporations are such as are instituted for the benefit of certain persons as individuals, or for the purpose of applying private funds or enterprize and skill to the public good. "Public Corporations are such as exist for public political purposes only, such as counties, cities, towns and villages; they are founded by the Government for public purposes, and the interest in them belongs to the public. But if the foundation be private, the corporation is private, however extensive the uses may be to which it is devoted, by the founder on the nature of the intention. A Bank created by the Government for its own uses, and when the Stock is exclusively owned by the government, is a public Corporation." "A hospital founded by a private benefactor, is, in point of law, a private corporation, though dedicated by its charter to general charity. A College founded and endowed in the same manner, is a private charity, though from its general and beneficent objects, it may acquire the character of a public institution." "To hold a corporation to be public, because the charity was public, would be to confound the popular with the strictly legal sense of terms, and jar with the whole current of decisions since the time of Lord Coke." 2d Kent's Com. 222-3. In Philips vs. Berry, 2d Term. Rep. 352, Lord Holt, speaking of Public Corporations, said, that "those that are for the public government of a town, city, mystery or the like, being for public ad-

vantage, are to be guided according to the Laws of the Land."—"But private and particular Corporations for charity founded and endowed by private persons are subject to the private government of those who enacted them." It is clear from these Authorities, that the object of the Medical College does not make it a public or political corporation, and that as a private corporation, it is subject to the government of the Medical Society who erected it.

Having arrived at the conclusion, that the Medical College is a private corporation, or to speak more properly is part of a private corporation, the Medical Society, it now remains to be seen what is the legal effect of this conclusion upon the constitutionality of the Act of 1831, incorporating the Medical College.

The Act of 1832, is a contract between the State and the Medical Society, whereby the State, in consideration of the establishment of the Medical School by them, conferred upon the Medical Society the powers to organize the School, to establish the professorships, to confer Medical Degrees, and to make all laws necessary for its government. The Act of 1831, transferring all these powers to the new corporation, is a plain violation of the contract. Under the 10th sec. of the 1st Article of the Constitution of the U. States, each State is prohibited from passing any law impairing the obligation of contracts. By the Constitution of this State, the people have prohibited the Legislature from ever passing any such law. This prohibition of the Constitution of the United States, and of this State, applies in as much, if not more force to a contract made by the State with an individual or corporation, as it does to a contract between citizen and citizen. Dartmouth College vs. Woodward 4, Wheat. 318. The Act regarded even as the grant of a franchise, is still as much a contract binding on the State, as the grant of a tract of land by an Act of the Legislature would be, and this according to the case of Fletcher and Peck, cannot be annulled by the same or a subsequent Legislature.

But in another point of view I think the unconstitutionality of the Act of 1831 is too apparent to be doubted; after having arrived at the conclusion that it is in derogation of the right of a private corporation.

The English Parliament is the supreme authority of Great Britain, and according to Blackstone, whatever it does, "no authority upon earth can undo." 1st Bl. Com. 161. This supreme uncontrolable power is derived from the supposition that the King, Lords and Commons are the Estates and the people of the realm, and from the government thus constituted, all power and authori-

ty to the other departments emanates. But in this State the government is strictly representative of the people and all the powers exercised by any of its department is derivative from them under their constitution. The three different departments, the executive, legislative, and judicial, are co-ordinate, neither has any superior, in its particular sphere of action, save the will of the people, the constitution, to which, as the source from each derives the power it exercises, obedience is due. If either transcends the department to which the people have assigned it, or exercises a power not granted to it, or which is prohibited to be exercised, the act is void, and has no effect; for it was done without the authority of the people, and without this no department of our government can act. The legislative authority of this State is vested in a general assembly, "consisting of a Senate and House of Representatives. 1 sec. 1st Art of the Con. of So. Ca. so far, the making of laws, which is to regulate the people of the State, considered as members of a civil community; or the granting by the State as a sovereign power as of any of her property, officers, franchises, privileges or immunities, the legislature have the right to act as they please, if they conform to the forms and requisites of the constitution. But if they undertake to exercise either executive or judicial power, it is an usurpation of the rights of the people, which they have confided to another department, and which, however unwelcome an office it may be, it becomes the duty of the judiciary, as the Representative of the people, to resist and control.

An act of the legislature which takes from one man his property rights, and gives it or them to another on a claim of right is the exercise of judical power, which is "vested in such superior and inferior Courts of Law and Equity as the Legislature, have from time to time directed and established, (1st sec. 3d Act of the Con. of So. Ca.) and is therefore prohibited by the people from being exercised by the legislature. So too to divest a corporation of any of its rights, privileges or immunities, is the exercise of judicial power; and the more especially as in the case before us, where the question is whether the legislature have before granted the rights, privileges and immunities which they now claim the right to confer on another corporation. If these have not before been granted to another corporation, the act now granting them for the first time, trenches upon no vested rights and cannot be questioned. But if they have before been granted, nothing remains in the State to be granted, and she cannot resume her grant, or

transfer it to another, until a forfeiture of the grant is judicially ascertained and established.

In England the creation of a corporation is within the King's prerogative, but still as an incident to supreme power, the Parliament may exercise, and have exercised the right of incorporation. (1 Bl. Com. 472, 3, 4) I am not disposed to say that the power of creating a corporation as a part of the King's prerogative, belongs to the Legislature; for I regard the whole doctrine of prerogative rights as utterly inapplicable to the simplicity of Republican Governments. The right to grant a corporate franchise, belongs to the Legislative power, as being in this respect the entire representative of the sovereignty of the people. Yet notwithstanding it is thus rightfully to be regarded as falling within the grant of legislative power, it cannot be exercised as in general legislation, to enact and repeal at pleasure. In one sense an act of incorporation is law, but in another, it is only a grant by the whole people of certain powers, rights, privileges and immunities, to a part of the people. It is law, in as much as it constitutes a rule of action, by which the corporators, and all the community are to be governed in the relation to the body politic and corporate. But between the State and the corporators, it is like a grant of certain powers, rights, privileges and immunities, which by the act of incorporation pass out of the State and are vested in the corporation; and can only be forfeited by a breach of the implied condition on which the grant is made, misuser or non-user, "in which case the law judges that the body politic has broken the condition on which it was incorporated, and thereupon the incorporation is void." 1st Bl. Com. 485.

The 2d sec. of the 9th Act of the Con. of So. Ca. provides that "no freeman of this State shall be taken, or imprisoned, or dessiessed of his freehold, liberties, or privileges, or outlawed or exiled but by the judgment of his Peers or by the law of the land. Nor shall any Bill of attainder, expost facto law, or law impairing the obligations of contracts ever be passed by the Legislature of this State."

A body politic and corporate is not, it is true, a freeman, within the words of this section, yet it is composed of freemen, who are entitled to all the privileges conferred upon them by the act of incorporation, and of these they cannot be desseissed but by the judgments of their Peers or by the law of the land. And of course the corporation can only be forfeited or deprived of any of its privileges in the same way.

Judge Kent, in the 2d volume of commentaries, at page 244, thus sums upon the doctrine of visiting corporations. "The better opinion seems however to be that any corporation chargeable with trusts may be inspected and controlled, and held accountable in Chancery for an abuse of such trusts. With that exception the rules seems to be that of all corporations are ameneable to the Courts of law; and there only according to the cause of the common law for non-user or misuser of their franchises."

It would hence seem that both by the constitution and the common law, a corporation can only be deprived of its powers, rights, privileges and immunities, by a judgment of forfeiture, obtained according to the law of the land. By this I understand a trial had and judgment pronounced in the Court of law of this State.

From these views, we are constrained to pronounce and declare the Acts of the General Assembly to incorporate the Medical College of South-Carolina, passed on the 17th December, 1831, unconstitutional.

The motion to reverse the Decision of the Judge below is granted; and leave is given to the relators to file the information in the nature of a quo warranto. (3 Bl. Com. 264.)

"Signed," JOHN B. O'NEALL.
"I concur," DAVID JOHNSON.

Filed 5th July, 1832.

THE STATE OF SOUTH-CAROLINA,
Office of the Clerk of Court of Appeals.

I, Thomas J Gantt, Clerk of the Court of Appeals, in the State aforesaid, do hereby certify that the above opinion is a true copy from the original opinion pronounced in said case, and filed on Record in this Office. Given under my hand and the Seal of the Court of Equity (there being as yet, no Seal for the Appellate Court) at Charleston, this eleventh day of July, Anno Domini, 1832.

THOMAS J. GANTT, C. C. A.

NOTE C.

AN ACT to incorporate the Medical College of South Carolina.

Sec. 1. Be it enacted by the Senate and House of Representatives, That a Board of Trustees and Professors be and are hereby established and declared to be a corporate body, under the style and title of the President, Trustees and Faculty of the Medical College of the State of South Carolina.

Sec. 2. And be it further enacted, That the said Board of Trustees shall consist of eleven members, viz. Nathaniel Heyward, C J. Colcock, Henry L. Pinckney, Robert J. Turnbull, Samuel Prioleau, Elias Horry, Wm. Drayton, Jacob Ford, H. A. Desassure, Jasper Adams and Mitchel King, Esquires, who shall elect a President from among themselves.

Sec. 3. And be it further enacted, That when a vacancy shall occur among the members of the said Board of Trustees, such vacancy or vacancies shall be filled by the remaining members of the Board.

Sec. 4. And be it further enacted, That the Faculty shall consist of J. Edwards Holbrook, Samuel Henry Dickson, Thos. G. Prioleau, Edmund Ravenel, Henry R. Frost and John Wagner, Professors.

Sec. 5. And be it further enacted, That the said Board of Trustees and Faculty shall have perpetual succession of officers and members, with a common seal; shall have power to make all lawful and proper rules and bye-laws, for the government and regulation of themselves and of the said College; and that the said corporation is declared capable of receiving and holding real and personal estate not exceeding sixty thousand dollars, whether acquired by gift, devise, bequest or purchase, for the benefit of the said College.

Sec. 6. And be it further enacted, That whenever any vacancy shall occur in the Faculty of the said College, the said Board of Trustees and Faculty shall have power to elect to the vacant Professorship, and also to establish such other or assistant Professorships, under such regulations as they may deem essential to the interests of the said College, and to remove any Professor or Professors for incapacity or misconduct.

Sec. 7. And be it further enacted, That the said Board of Trustees and Faculty shall have power to confer medical degrees with license to practice Medicine and Surgery, on such persons as may have attended Lectures in the said College, and may be recommended by the Faculty, and on such other persons as they may propose.

Sec. 8. And be it further enacted, That this shall be deemed a public Act, that the same need not be pleaded, but may be given in evidence under the general issue.

Sec. 9. And be it further enacted by the authority aforesaid, That this Act shall be and continue of force for the term of twenty-one years.

In the Senate House, the twentieth day of December, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-seventh year of American Independence.

HENRY DEAS, President of the Senate.

H. L. PINCKNEY, Speaker of the House of Representatives.

NOTE D.

JUDGES' CHAMBERS,

CHARLESTON, JULY 5, 1833.

The STATE *vs.* ADAM SENFT and Dr. THOS. G. PRIOLEAU. } Motion for a Rule to shew cause why a Writ of Certiorari should not issue, to remove the Inquisition found in this case by the Magistrates and Freeholders into the Court of Sessions.

The Inquisition in this case, finds that the Medical Society of South Carolina, was lawfully and peacefully possessed of an Estate for years, of, in and to the Lot and Land and Buildings thereon, situated in Queen-street, in the City of Charleston, called and known by the name of the Medical College, on the——day of April, in the year of Our Lord One Thousand Eight Hundred and Thirty-Three, when Adam Senft, and Thomas G. Prioleau, and other persons unknown, on the said———day of April, in the year of Our Lord aforesaid with strong hand and with force of arms, entered into the said house, called the Medical College, and expelled, ejected and amoved the said Medical Society of South Carolina thereof—and the said Medical Society so expelled, ejected and amoved of the said house and buildings, called the Medical College, on the said———day of April last past, until the day of taking the said Inquisition, with main force and power, withheld, and now do withhold in great disturbance of the peace of the State, and against the force of the statues in such case made and provided; as by the said Inquisition duly returned by the two Magistrates who held the Inquisition, and the Twelve Freeholders, who found the said Inquisition, may more fully appear.

When this Inquisition was retured and filed.

Mr. Frost, as Counsel for the Faculty and Trustees, the relators in this case, moved for the writ of Certiorari to issue forthwith, in order to remove the case into the Court of Sessions, on the ground that it was the proper and appropriate remedy for removing all proceedings from Inferior Tribunals to the Superior Courts of Justice.

He contended that in England, the King, by virtue of his royal prerogative, had a right to this writ in all cases where he was concerned; *as a writ of right*, he had a right to remove all cases from the inferior tribunals into the *King's Bench*, where the crown is concerned, but admitted that in some cases between his subjects it may be refused—and for that purpose, quoted and relied on I. Chitty, page 379 old ed. 259new edition. It may be moved for to obtain a new trial in the King's Bench, which an inferior Court cannot grant. This writ lies against Justices of the Peace, in cases where they are empowered finally to hear and determine.

Nothing, he contended, could take away this power from the Court of King's Bench, but the express provisions of a statute. In all cases where a new jurisdiction is created, the operation of the Court immediately applies. He quoted 1 Bac. 561, where it is laid down that this writ may be granted in all cases,unless exempted by an act of Parliament; 2 Hawk., Lib. 2, chap. 3, sec. 6, to same point.

In 2 Cain's, 197, it lies to the Court of Common Pleas, although that court has a right finally, to hear and determine. Again, a Certiorari lies in all cases where there is no appeal—and it is a good ground that there is no appeal to afford this writ; and it lies as well after conviction as before it. Salk. 146, 149. When an indictment is found, is the proper time to apply for it.

In 6th Johnson, 334, it is said, that the granting a Certiorari is as much a matter of right, as a Habeas Corpus. And in order to shew that it was a matter of right in this State, the case of Mary Huntingdon was quoted and relied on, as a case carried up to the court of Sessions, on the writ of Cirtiorari, 1 Tread. 325.

On the 6th of July, Col. Cross was heard in reply to Mr. Frost. He contended against the motion, that the relators were too late in applying for this writ. It should have been moved for, by the rules of the law, before the Jury was sworn; all the cases in the books he urged, where this writ had been allowed, were before the Jury was sworn.

The 43 Elizabeth, is express upon this subject—that no writ shall be allowed, to remove any cause from any inferior court, into the King's Bench, unless moved for before the Jury is sworn to try the cause; and 1 Salk. 144, says it shall not be delivered after the Jury is sworn; and 4 Black. 320, says, it may be moved for at any time before trial; 2 Hawk. 287, it is a good objection against granting a certiorari, that issue is joined below, or after conviction—1 Hawk. 154.

Col. Cross then stated that the Court of Appeals had already determined that the Medical School was a part of the College

of South Carolina, so that it would be of no use to grant this writ, to carry the case up to the Court of Sessions, as it would be carrying the same case up before the same Judges again.

The Magistrates who tried this case were legal characters, of great impartiality and justice—they had no doubts on the merits of this case; and the Jury were also an able, upright and intelligent one, against whom not the smallest misconduct has been alleged.

Col. Cross then took up another strong ground in the cause —*that no good or legal grounds had been urged or alleged, to authorize the issuing of this writ.*

The gentleman who had preceded him on the other side, he said, had admitted that although the King of England, in the midst of his *prerogativa regis*, had a right to this writ, yet, as between subjects, some good reason or cause should be assigned, as between them, before it was granted.

The powers granted to inferior tribunals, are generally given for the speedy administration of justice, and to prevent delay, and where the inferior Judges or persons entrusted with the execution of them, act within the bounds of their jurisdiction, they are entitled to support and confidence, as well as the superior courts.

Hence, the wisdom of the law, in all cases, wherever their proceedings are called in question, requires some good reason to be assigned to authorize such interference.

The act of 1817, creates a new jurisdiction for forcible entries and detainers, and declares that their proceedings shall be final and conclusive; and authorizes the sheriff to give possession, agreeably to the act of 1812, for regulating proceedings between Landlords and Tenants.

Col. Hunt followed Col. Cross, on the same side, on behalf of the Medical Society, and he discarded all the prerogatives of the Crown of Great Britain, as inconsistent with our Republican principles, and insisted that the Constitution of the State of South Carolina and that of the United States, were the foundations of all power in the United States, and in every State of the Union. They gave efficacy and effect to all the laws for the government of the citizens of the country, and that no law was binding which was not authorized by these constitutions.

He admitted that the King of England, as the fountain of all power and justice there, might remove all causes from inferior courts, into his courts, as he pleased, and when he pleased—but no such power, he urged, existed in this State. The constitution declares that the judiciary should consist of such courts and tribunals of justice within this State, as the Legislature should from

time to time establish or ordain. No such power or prerogative, as that exercised by the King of England, ever existed or prevailed in this country; consequently the writ of certiorari as a writ of course, never existed, or was in use in this country, therefore all the authorities quoted on that head, are totally inapplicable.

Forcible entries and detainers here are regulated by the act for landlords and tenants, which are given to the magistrates and freeholders without appeal to any superior tribunal, their proceedings in such cases, are final and conclusive. The cases also between masters and apprentices, are also given to the magistrates, and it has been determined by the court of Appeals, that no appeal lay in such cases, as in Carmand's case. So that in all cases of inferior jurisdictions, where no appeal is expressly given, the law intended that no appeal should be allowed, unless in such cases where great abuses are committed, when they may be quashed, then proceedings are final and conclusive; and the whole drift and design of the present application is to obtain eventually an appeal which would create a delay of Justice till next February, by which means the whole proceedings in the College would be in abeyance till that time, and even at that time, the case would again go back to the same Judges who have already determined, that the act of 1831 was unconstitutional and void, and who doubtless would be of the same opinion they have already pronounced.

Here Col. Hunt produced the opinion of Judge Johnson and Judge O'Neal, in which they declare, that the act to incorporate the Medical College of 1833 was unconstitutional, null and void.

This opinion he contended settled the matter in dispute between the parties, and left them without a foundation to rest upon.

Mr. Randell Hunt followed Col. Hunt, on the part of the relators, and he took up and enlarged upon the same grounds his predecessor had observed on before him. He contended that the common law of England when made of force in this State, only included such parts of it as were applicable to the situation and circumstances of the country. A very large proportion of the prerogatives of the King, and the power which he exercises over his Courts never were applicable in the State of South Carolina; every thing essential here, and indeed the source of all power, is the constitution made by the people themselves, and for their benefit; and all the tribunals of Justice, are made through their Legislature for their advantage, and for the mutual benefit of all—there is no peculiar power vested in the State but for the advantage of its citizens. The King of England may draw to his

Courts by virtue of this writ of Certiorari all the causes in the Kingdom by his royal prerogative, as a matter of right and as a matter of course; but in this country no such writ is grantable but on special cause shewn for granting such writ, for the fair and equal distribution of justice. No such cause has been shewn in this case, it has not even been attempted or suggested. The conduct of the magistrates has been fair and impartial—and that of the jurors upright and independent—then why grant this writ? It must be for the purpose of delay. After the opinion of the Court of Appeals, (that the act of 1831 granting the respondents or faculty, all the powers they claim) is unconstitutional and void.

From the jurisdiction of the magistrates and freeholders in this case, there lies no appeal, their powers are final and conclusive; there is none given by law, and therefore the law will intend that there should be none. To grant this writ in this case therefore would be against the intendment of the law. Carmand's case is conclusive on this point, that where no appeal is given it shall not be granted.

Mr. King, in conclusion for the respondents, the faculty and trustees, contended that all the powers and prerogatives of the crown, are vested in the State of South-Carolina; and that our Court of Sessions, has all the powers of the King's Bench in England. 1. Brevard, 216, act 1721, pub. laws, 128.

The Constitution recognizes the acts of the judiciary as of full force, until altered or repealed. But a large proportion of our writs and proceedings, depends upon the common law, and common usage, and has been devised by the judges in ancient times, as occasion might require.

Thus for instance, there are no acts for issuing prohibitions, mandamus, and many others, yet those writs are in constant use, and justice could not be duly administered without them in a thousand instances. So it is with regard to the writ of Certiorari, issuing out of the King's Bench or Chancery, to remove all proceedings from the inferior Courts to the superior ones, for the more effectual administration of justice.

There are appeals in many cases besides the final appeal to to the Court of Appeals of the highest nature; and this, long after the adoption of our Constitution.

3 Brevard 49, sec. 83, the writ of Certiorari is recognized from the City Court. Grimke's justice 114.

In the case of Mary Huntingdon, a case exactly similar to this, it was removed by the Certiorari.

If the party is deprived of this remedy, in cases of great moment and importance, he will be remediless. The case of Carmand and his apprentice, was a case of special domestic nature, and

required a speedy and specific determination; and therefore no appeal was allowed to the Supreme Court of Appeals.

In the law of 1812, for regulating the trial of cases between landlords and tenants holding over, the words are to be sure, that the proceeding should be final and conclusive; but that ought to be intended to be the facts found by the jury; but as to the law, that is still left open for the supreme tribunal, for the common law is not to be repealed by implication, it must be by an act.

He admitted that the cause for granting this writ, ought to be a good one: and if the respondents can shew sufficient cause, it ought to be granted—*there is no other remedy for obtaining redress*, and that alone is a good cause.

The 43 Elizabeth is confined to civil cases, and not to those of a criminal nature, where the King applies for it, it a matter of course, but where a subject applies for it, grounds must be assigned—2 Durn, and East 86, 4 Burr 2456, 8 Petersdorf, 239, same is laid down. The Court may grant it as well before, as after a conviction, so that the present application is not too late.

OPINION.

I have now gone through the principal cases quoted, and relied upon by the parties on both sides, and it only remains for me to class the different cases and the grounds of the arguments of the different counsel, upon the points submitted, so as to meet the real merits of this important controversy, consistently with the rules of law, and the principles of justice.

As a great deal has been introduced in the argument, about the prerogatives of the crown and about the rights of the King of England, I shall condense what I have to say on this branch of the subject, within as narrow limits as possible. I admit that the King of England as the fountain of all power in that country, has exercised the right of regulating their Courts of Justice and drawing to their jurisdictions, time out of mind, all such cases as they have by their Judges, thought expedient for the administration of justice among their subjects; and as incidental to that fundamental power, to issue such writs and processes as they might think conducive to that end; and among others, that of issuing writs of Certiorari to all the inferior jurisdictions in the kingdom, to take up to his higher courts of justice, all cases he pleases, so as to keep the whole under their control. But I deny that such a case exists in the State of South Carolina. Such high prerogatives do not exist in this State—all power here is vested in the people, and they by their Constitution, have vested in the different branches of the Government, such powers as they have thought necessary for the protection of the State, its citizens, and their lives and properties; and all our tribunals of justice have been so reg-

ulated, as to distribute equal justice to all. The State possesses no power, but such as is absolutely necessary to the ends of justice—nor the citizens any rights but such as are necessary for protection by violence or injustice. The high prerogatives of the crown, as possessed by the Kings of England, are utterly unknown to, and inconsistent with the republican system in America.

In England the King is entitled to this high prerogative writ of Certiorari as a matter of course, without assigning any cause or ground for it, although as between citizens or subjects, the law, even there, requires that cause should be shewn, before it can be granted, and this distinction is well laid down and defined by some of the best law authorities upon that subject.

In Chitty, page 257, it is laid down, that the writ of Certiorari is demandable of absolute right only by the King himself, and to him the court is bound to grant it, and therefore when applied for by the Attorney General, or other officer of the Crown, either as a prosecutor, or when it is taken up in defence of a party indicted, or on his being an officer of the crown, it must issue as a matter of course, and the court has no discretion. But when the King's name is only made use of by a private prosecutor, a material distinction arises; for though the writ is usually awarded as a matter of course, it is in the power of the Judges to refuse it or quash it; and when applied for on the part of a defendant it is never granted, unless there are strong reasons for removal of the case assigned—a practice which has prevailed since the time of Charles 2d.

In Durn. and East. 89, Buller J. says, the language of the Court has always been, that the King has a right to remove proceedings by Certiorari of course; but where a defendant makes application of this sort, he must lay a ground for it before the Court. Lord Mansfield, he says, has laid down this distinction again and again: that on the part of the Crown, it is a matter of course for the Court to grant it; but on the part of the defendant, it is *not a matter of course*. Now, if it be not a matter of course to grant this writ, it can only be obtained by laying a ground by affidavit, and unless this rule was observed, the consequence would be, that we should have to decide upon every conviction in the kingdom, which would be removed into this Court.

Buller J. on a subsequent day, said that upon a further inquiry into the case, it appeared most clearly that the opinion of the court in the above case was correctly proper. That the rule respecting the laying the ground before the court for granting a Certiorari, had obtained since the days of Charles 2d. In Doug. 554, the King against Whitebread, the Court say, that we are all of opinion in this case, that the Certiorari does not lie; but if it

did, *it must be granted on affidavit to support the application.* A great number of other cases were quoted and relied upon, to the same point, in the course of the argument; but those I have relied on are sufficient to establish the law on this head, beyond all kind of doubt or controversy whatever. Here then I take my stand on this branch of the case and am decidedly of opinion, that unless good and sufficient grounds are stated and supported by affidavits, this court is not warranted in granting this writ. I must in candor, however, admit that formerly during the existence of the county courts, which often ran wild in their judgements and decisions, writs of Certiorari were in use, in order to reach the justice of cases decided in them, but never, I believe without affidavits to support the grounds upon which they were granted. Since the abolition of these courts, this writ has gone into disuse, except in Mary Huntington's case, which passed sub silentio, and without argument or discussion.

But in the case under consideration no ground whatever has been alleged, nor affidavits submitted, to justify the court in granting it; on the contrary it has been demanded as a matter of right, or as a thing of course in the usual current of practice, in our courts of justice. And the wisdom of the law is evident in restraining this writ, and submitting it to the sound discretion of the courts of Justice, before it can be granted; otherwise, all the cases in the inferior tribunals in the State, would be carried up to the court of Sessions, which possesses the same powers here, as with the King's Bench in England, as was well observed by Mr. Justice BULLER. The case relied upon from 6th JOHNSON 334, in which it is said, the granting a certiorari is as much a matter of right as a habeas corpus, appears to me against all the sound and stable principles of the law upon the subject. If there was no other ground in the case, but this one, it would be sufficient alone to justify the court in refusing the present motion.

2ndly. But there is another ground in the case, which renders unavailing every attempt to support the rights of the Faculty and Trustees in this case.

The court of Appeals, the highest tribunal of justice in South Carolina, has, after a very laborious investigation, declared the act of the Legislature, "entitled an act to incorporate the Medical College of South Carolina," passed the 17th Dec. 1831; (under which the faculty or respondents claim all their rights and franchises,) unconstitutional, null and void.

This therefore, without further observations, leaves them without a pivot to stand upon—all their rights and privileges founded on the act, go with it.

I am therefore bound to reject the present motion for the Certiorari, and to leave the magistrates at liberty to proceed, agreeably to law.

E. H. BAY.